

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 LUXOTTICA GROUP S.P.A.,

8 Plaintiff(s),

9 v.

10 VEGAS FOTO, INC., et al.,

11 Defendant(s).

Case No. 2:16-CV-2608 JCM (PAL)

ORDER

12
13 Presently before the court is Magistrate Judge Leen's report and recommendation
14 ("R&R"). (ECF No. 28). No objections have been filed, and the deadline for filing objections has
15 since passed.

16 On March 17, 2017, the magistrate judge granted defense counsel's motion to withdraw as
17 attorney (ECF No. 23). (ECF No. 25). In that order, the magistrate judge ordered defendants
18 Doron Mashal and Shirah Mashal ("the Mashals") to either obtain substitute counsel or file a notice
19 with the court that they would be appearing in the matter *pro se* by no later than April 17, 2017.
20 (ECF No. 25). The magistrate judge further ordered that defendant Vegas Foto, Inc. to retain
21 substitute counsel by no later than April 17, 2017. (ECF No. 25). The magistrate judge cautioned
22 that failure to timely comply with the order may result in sanctions, including default judgment.
23 (ECF No. 25).

24 On April 17, 2017, the parties filed a joint interim status report (ECF No. 26) electronically
25 signed by Doran Mashal "c/o Zohar Ben-Ray, CPA Vegas Foto, Inc. Doran & Shirah Mashal . . .
26 defendants, pro se." (ECF No. 26). The magistrate judge construed the signature as a statement
27 that the individual defendants would be appearing *pro se*.
28

1 On May 4, 2017, the magistrate judge ordered defendant Vegas Foto, Inc. to show cause
2 in writing, by May 23, 2017, as to why sanctions should not be imposed for its failure to retain
3 substitute counsel. (ECF No. 27).

4 On June 2, 2017, the magistrate judge entered a R&R recommending that default judgment
5 be entered against defendant Vegas Foto, Inc. for its failure to timely comply with the court's order
6 (ECF No. 25) and order to show cause (ECF No. 27) to retain counsel. (ECF No. 28).

7 To date, defendant Vegas Foto, Inc. has yet to file a notice of appearance by substitute
8 counsel, a response to the order to show cause, or an objection to the R&R.

9 This court "may accept, reject, or modify, in whole or in part, the findings or
10 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects
11 to a magistrate judge's report and recommendation, then the court is required to "make a de novo
12 determination of those portions of the [report and recommendation] to which objection is made."
13 28 U.S.C. § 636(b)(1).

14 Where a party fails to object, however, the court is not required to conduct "any review at
15 all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149
16 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a
17 magistrate judge's report and recommendation where no objections have been filed. *See United*
18 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
19 employed by the district court when reviewing a report and recommendation to which no
20 objections were made).

21 Nevertheless, this court finds it appropriate to engage in a *de novo* review to determine
22 whether to adopt the recommendation of the magistrate judge.

23 A corporation is not permitted to appear in federal court unless it is represented by counsel.
24 *United States v. High Country Broad. Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993). Although a
25 non-attorney may appear on his own behalf to represent himself, that privilege is personal to him.
26 *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). An individual has no
27 authority to appear as an attorney for anyone other than himself. *Id.*

1 While the Mashals, as individuals, may appear in federal court *pro se*, defendant Vegas
2 Foto, Inc., as a corporation, must be represented by counsel. Defendant Vegas Foto, Inc. has been
3 given ample opportunity to retain substitute counsel and has been cautioned as to the consequences
4 of its failure to timely comply. Notwithstanding, defendant Vegas Foto, Inc. has elected not to
5 comply with the court's orders (ECF Nos. 25, 27).

6 Upon reviewing the recommendation and underlying filings, the court finds that good cause
7 appears to adopt, in part, the magistrate judge's recommendation (ECF No. 28). In particular, the
8 court finds that entry of default, rather than default judgment, against defendant Vegas Foto, Inc.
9 is an appropriate sanction for its noncompliance with the court's orders (ECF Nos. 25, 27) to retain
10 substitute counsel.¹

11 In light of the foregoing, the court will strike defendants' answer (ECF No. 10) insofar as
12 it relates to defendant Vegas Foto, Inc. and instruct the clerk to enter default against defendant
13 Vegas Foto, Inc.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge Leen's
16 report and recommendation (ECF No. 28) be, and the same hereby is, ADOPTED IN PART
17 consistent with the foregoing.

18 IT IS FURTHER ORDERED that defendants' answer (ECF No. 10), as it relates to
19 defendant Vegas Foto, Inc., be, and the same hereby is, STRICKEN.

20 IT IS FURTHER ORDERED that the clerk shall enter default against defendant Vegas
21 Foto, Inc.

22 DATED July 7, 2017.

23 
24 UNITED STATES DISTRICT JUDGE

25
26
27 ¹ Obtaining a default judgment is a two-step process. *Eitel v. McCool*, 782 F.2d 1470,
28 1471 (9th Cir. 1986). Federal Rule of Civil Procedure 55(b)(2) provides that "a court may enter a
default judgment after the party seeking default applies to the clerk of the court as required by
subsection (a) of this rule." Fed. R. Civ. P. 55(b)(2).